REACH LTD.

COMMENTS ON THE INFO-COMMUNICATIONS AUTHORITY

OF SINGAPORE'S

CONSULTATION PAPER ON SINGAPORE TELECOMMUNICATIONS LIMITED'S

REQUESTS FOR EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS WITH

RESPECT TO THE INTERNATIONAL TELEPHONE SERVICES MARKET

OF 10 APRIL 2003

7 MAY 2003

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Comments on the Info-Communications Authority of Singapore's Consultation Paper on Singapore Telecommunications Limited's Requests for Exemption from Dominant Licensee Obligations with Respect to the International Telephone Services Market of 10 April 2003

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1 INTRODUCTION

1.1 On 1 April 2003, the Info-Communications Authority of Singapore **(IDA)** received a request **(the Exemption Request)** from Singapore Telecommunications Limited **(SingTel)** for a grant of exemption under Subsection 2.6.1 of the Code of Practice for Competition in the Provision of Telecommunication Services **(the Code)** from the Dominant Licensee obligations with respect to the International Telephone Services **(ITS)** Market. The IDA, on 10 April 2003, issued a consultation paper to provide an opportunity for public comment on the Exemption Request **(the Consultation Paper)**.

1.2 In the Exemption Request, SingTel identified, but did not limit to, the following ITS services as those to which the Exemption Request relates **(the Listed Services)**:[1]

"The ITS services provided by SingTel to which this request for exemption relates include but are not limited to the following SingTel international telephony services:

(i) IDD 001;
(ii) STD 020;
(iii) BC 013;
(iv) v019;
(v) FaxPlus;
(vi) ICC;
(vii) Voice VPN;
(viii) World Conference;
(ix) Corporate Switched Telecommunications Network (CSTN);
(x) Prepaid Calling Cards;
(xi) Operator Assisted Services;
(xii) Evoiz;
(xiii) Overseas Paid 800;
(xiv) Overseas Collect Call;
(xv) Wholesale Voice Basic Services;
(xvi) Wholesale Voice Silver Services;
(xvii) Wholesale Voice Gold Services; and
(xviii) International Toll Free Service"

[1] Paragraph 1.2 of the Exemption Request.

1.3 With respect to the ITS, SingTel requested exemptions from the following Dominant Licensee obligation provisions, without limitation, of the Code:[2]

"With respect to ITS, SingTel requests the IDA grant an exemption from its current Dominant Licensee obligations, including the following provisions of the Code (without Limitation):

(i) Section 3.3.1 – Duty to provide service on demand

(ii) Section 3.3.2 – Duty to provide service at just and reasonable prices, terms and conditions

(iii) Section 3.3.3 – Duty to provide service on a non-discriminatory basis

(iv) Section 3.3.4 – Duty to file and provide service pursuant to tariffs

(v) Section 3.3.5 – Duty to provide unbundled telecommunications services

(vi) Section 5.8.1 – Duty to Allow Resale of End User Telecommunication Services

(vii) Section 5.8.2 – Duty to Allow Sales Agency

(viii) Section 5.8.3 –Duty to Tariff and Make Wholesale Telecommunication Services Generally Available

(ix) Section 7.2.1 – Pricing Abuses, including subsections 7.2.1.1 to 7.2.1.3

(x) Section 7.2.2 – Other Abuses, including subsections 7.2.2.1 to 7.2.2.2."

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[2] Paragraph 1.3 of the Exemption Request.

1.4 SingTel, in the Exemption Request, claimed the following justification for exemption from these Dominant Licensee obligations:[3]

"SingTel submits that the criteria under section 2.6.1 of the Code for the IDA to grant an exemption from the Dominant Licensee obligations applicable to the ITS market are satisfied, namely:

- *that the continued application of the Dominant Licensee obligations is not necessary to protect end users; and*
- *the continued application is not necessary to preserve effective competition amongst Licensees,*

as supported by the verifiable data contained in this submission."

1.5 Reach Ltd. **(REACH)**, on behalf of its subsidiary Reach International Telecom (Singapore) Pte Ltd, herein submits its comments why the IDA should deny SingTel's Exemption Request.

2 OVERVIEW

2.1 The Singapore telecommunications market has been fully liberalized since 1 April 2000 with the removal of regulatory barriers to entry, and over 600 Facilities-Based Operator **(FBO)** and Services-Based Operator **(SBO)** licences have now been issued. However, the presence of competitors or even the existence of a competitive environment does not mean that an individual operator is not or cannot be dominant in that market. Although SingTel is no longer the monopoly operator in Singapore, with a share of 79% of total retail, wholesale, and transit international minutes[4], SingTel clearly remains dominant in the related markets. SingTel itself has recognized that it is the dominant telecommunications services operator in Singapore and has described itself as such:[5]

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[3] Paragraph 1.4 of the Exemption Request.

[4] *"Singapore Telecommunications Limited and Subsidiary Companies, Management Discussion and Analysis of Unaudited Financial Condition and Results of Operations for the Nine Months ended 31 December 2002",* Section 11, Page 16.

[5] See SingTel website "www.Singtel.com", under "About SingTel", "Company Profile", "QuickFacts". Alternatively, see Attachment 1 (although issued in 2002, SingTel has only lost a small proportion of traffic share since then and remains dominant).

“ ▪ *SingTel is the dominant provider of telecommunications services in Singapore with:*

- *1.95 million telephone lines in service, representing a market share in excess of 99%*

- *about 87% of international long distance market share*

- *1.56 million mobile subscribers in Singapore as at December 2002, representing half of the market share.”*

2.2 In the introduction to the Exemption Request, SingTel identifies the benefits which a fully contestable market allows. However, SingTel does not distinguish between the current fully liberalised market in Singapore where there are no regulatory barriers to entry, and a fully contestable market with no other impediments to market entry – something which Singapore currently does not enjoy. In paragraph 2.2 of the Exemption Request, SingTel lists what it considers to be indicators of a highly competitive ITS market in Singapore but does not adequately demonstrate their presence. This list is also incomplete regarding the factors which need to be considered in a review to establish whether Dominant Licensee obligations are still necessary to protect End Users[6] and to preserve effective competition amongst Licensees.

2.3 Contrary to SingTel's assertion in paragraph 2.3 of the Exemption Request, REACH maintains that a full and proper analysis of the market using appropriate recognized economic assessment criteria will show that the continuation of Dominant Licensee obligations for SingTel is both consistent with the Code and necessary for the promotion and development of effective competition in the telecommunications market.

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[6] Customers that are business or residential end users.

2.4 REACH summarises below the matters which are essential for a dominance review and relevant to the exemptions requested - which SingTel has either not identified or not adequately addressed in the Exemption Request, arbitrarily (and incorrectly) dismissed without appropriate justification as irrelevant, not supported with evidence, or has suggested should not be considered simply because of administrative inconvenience.

Dominance Review Framework

2.5 Although SingTel quotes passages from the Code that Dominant Licensee obligations may be lifted over time if market conditions justify, and states the market conditions the IDA should expect to see before granting any exemptions, SingTel does not set out a framework upon which to justify – or for the IDA to assess – its request for exemptions beyond some selective references to the dominance review frameworks applied in other jurisdictions.

2.6 While not suggesting that the IDA necessarily adopt the dominance review frameworks applied elsewhere, the criteria in these frameworks have been developed from generally accepted relevant economic principles and competition law, are applied by the major liberalized telecommunications jurisdictions when assessing dominance – in part or in full – and do provide suitable frameworks for reviewing the Exemption Request. However, if SingTel chooses to reference overseas regulators' dominance review frameworks to support its application for the exemptions, then SingTel should be assessed against the full set of criteria in these frameworks – not just cherry pick some tests which suit SingTel's purposes.

2.7 Not only does the SingTel Exemption Request limit the tests for dominance applied in other jurisdictions, but SingTel is also selective in its references to IDA positions to support its claim for exemptions. For instance, in paragraph 4.2 of the Exemption Request, SingTel adopts the product market and geographic market definitional criteria in the IDA's draft Consolidation Guidelines[7] as appropriate for a dominance review. However, SingTel does not adopt the market share indicator of market power which the IDA also sets out in the same Consolidation Guidelines - that an entity with a market share in excess of 35% has the ability to unilaterally restrict output and raise prices[8]. SingTel has a 79% share of international minutes.

2.8 In the absence of a dominance review framework proposal from SingTel and the fact that out of all overseas jurisdictions which SingTel references in the Exemption Request, SingTel most frequently refers to the Office of the Telecommunications Authority **(OFTA)** in Hong Kong, REACH has applied the OFTA dominance review framework set out in its Competition Guidelines[9] in commenting on the Exemption Request. REACH believes that the Competition Guidelines provide an appropriate set of review criteria not only because they align with the generally accepted principles applied in Australia, the EU, and the US, but also because of the similarities in the environments of Singapore and Hong Kong. The principal elements of the OFTA dominance review framework are:

- Definition of relevant market, followed by consideration of the matters below.
- Degree of market concentration and market shares of licensees.
- The power to implement decisions.
- The height of barriers to entry.

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[7] *"Proposed Advisory Guidelines Governing Applications for Licence Assignments or Changes in Ownership of a Licensee in Connection with a Proposed Consolidation",* IDA, dated 16 October 2001 (**the Consolidation Guidelines**).

[8] Paragraph 6.2.3.1 of the Consolidation Guidelines.

[9] *"Guidelines to Assist the Interpretation and Application of the Competition Provisions of the FTNS Licence",* OFTA, June 1995 (**the Competition Guidelines).**

- Product differentiation and sales promotion.

- The nature of corporate relationships.

2.9 Also, there are other relevant factors which have not been considered in the Exemption Request, including the advantage which SingTel enjoys by being the primary recipient of inpayments and the opportunity this provides for SingTel to net account.

2.10 REACH also provides its assessment of the effect on End Users, the market and competition if the exemptions are granted.

Summary of Assessment of Dominance

2.11 Following a review of SingTel's market position and its justifications for requesting the exemptions, REACH has observed that the Exemption Request fails to establish a case for the IDA to grant any exemptions. Some key observations are:

Relevant market

- SingTel does not adequately or correctly define the relevant markets in which to undertake a review of the exemptions requested – neither retail (**Retail ITS**) nor wholesale (**Wholesale ITS**) services are fully analysed or categorized into their respective markets.

- While SingTel has undertaken some review of the geographic market, it has done so in a context more suited to the international telecommunications facilities market than the international telephone services markets under review in the Exemption Request. Even then, SingTel is dominant in the international telecommunications facilities market as well.

- SingTel has not undertaken any demand-side substitution analysis in its proposals for a definition of the relevant geographic market. Demand-side substitution analysis is considered key by regulatory and antitrust authorities in other jurisdictions. In the absence of any demand-side substitution considerations, SingTel erroneously tries to make a case that a route-by-route geographic market analysis is inappropriate and should be dismissed on grounds of administrative inconvenience.

- REACH believes that the Malaysia route should be treated separately from all other routes because of its proximity, materiality, and other special ties to Singapore.

Market share and concentration

- SingTel's 79% share of international traffic demonstrates that it is clearly dominant. At this level of market share, other regulatory authorities make a presumption of dominance. By comparison, the incumbent in Hong Kong had a 50% or lower market share in its international telephone services markets before it was declared non-dominant.

- Even with over 600 licensed competitors in the ITS markets, SingTel's market share of 79% shows that the market is highly concentrated with its focus on SingTel. Such a high level of market concentration does not indicate that the ITS markets are competitive.

- SingTel has lost only a maximum of 21% market share since full liberalisation of the telecommunications market in 2000. This is not a rapid or significant pace of market share loss compared to other locations during the emergence of competition, and indicates that SingTel has not been faced with strong and effective competition.

- SingTel's claim that price competition is the key test for dominance in relation to the Exemption Request, and that market share is not an important consideration, is obviously self-serving and does not stand up to even the most cursory of competent dominance assessments.

- SingTel makes reference to examples of non-dominance decisions in other jurisdictions as grounds for the exemptions, but often without making clear that these decisions were taken in different circumstances.

- SingTel's market share is over twice the 35% market power concern threshold which the IDA identifies in the Consolidation Guidelines.

Power to implement decisions

- Continuing high market concentration, market share, customer inertia, and that SingTel has not had to seriously market its wholesale services are all testimony to SingTel's power to implement decisions.

- Lack of less expensive wholesale market inputs for SingTel's competitors means that they are not able to exert significant pressure on SingTel's wholesale market decisions. Further, this wholesale market power allows SingTel to pursue retail pricing strategies regardless of competitive responses.

Barriers to entry

- While there may be low regulatory barriers to entry in the Retail ITS and Wholesale ITS markets, SingTel still acts as a gatekeeper for, and controls access to, critical facilities. Its ability to charge high prices for certain of these facilities demonstrates SingTel's control in these areas, and the continued existence of high barriers to entry.

- While it may be possible for competitors to build alternative network infrastructure and facilities, it is both expensive and time consuming to do so. In the interim, they must rely upon SingTel's existing infrastructure and facilities, and access to these remain a barrier to entry.

- Despite SingTel's claims, there are significant disconnection and installation costs associated with large customers changing telecommunications services suppliers which act as barriers to entry.

- SingTel's national presence, brand image and long-term relations with overseas telecommunications administrations are also barriers to competitive entry to the international telephone services markets.

Product differentiation and sales promotion

- SingTel does not have to seriously market its Wholesale ITS services, and its Retail ITS service prices are driven more by market power retention imperatives than competitive pricing pressures.

Corporate relationships (vertical integration)

- SingTel is also dominant in the international telecommunications facilities and local telephone line markets, giving it end-to-end ownership of facilities and services (and prices thereof) of key supporting elements of the international telephone services markets, as well as benefits arising from economies of scope and wider access to customer and competitor information than its competitors.

Other relevant factors

- SingTel has the advantage of being better positioned than its competitors to lower its outgoing telecommunications services costs through net accounting.

2.12 There should be no doubt that SingTel remains dominant in all aspects of the Retail ITS and Wholesale ITS markets, and that there is no justification for the relaxation – in whole or in part – of Dominant Licensees obligations for SingTel at this time.

2.13 SingTel is too powerful in both the ownership and control of facilities and other elements of the Retail ITS and Wholesale ITS markets, and remains the main source of supply for the resale Retail ITS market. SingTel's behaviour in other markets strongly suggests that if the exemptions were granted then there would be irreversible damage to both retail and wholesale markets. The harm done to End Users and the competition process would far outweigh any potential administrative benefits that could possibly arise from lifting the obligations from SingTel. REACH, therefore, requests the IDA not to accede to the Exemption Request.

3 DEFINITION OF RELEVANT MARKETS

3.1 The purpose of defining the relevant market in an exemption or dominance review is to establish what constitutes the product components and geographical scope of market in order to determine *"whether particular conduct has the effect of preventing or substantially restricting competition in a market"*[10]. The economic concept of a market as applied in antitrust or competition law includes the generally accepted test of both demand-side and supply-side substitution. In addition to the product and geographic aspects of the relevant market, the product market can have further distinguishing functional characteristics, for example, retail and wholesale markets.

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[10] Paragraph 11 of the Competition Guidelines.

3.2 The Exemption Request neither adequately nor correctly defines the relevant market. Although SingTel recognizes that the product market may be further split into separate functional markets of retail and wholesale, there is little or no further analysis of SingTel's dominance in the separate functional markets. All SingTel does in two scant paragraphs[11] is acknowledge the concept of functional markets and list the possible retail and wholesale operators. No dominance review should really be undertaken until SingTel has provided a separate analysis of both retail and wholesale markets for consideration by the IDA – the onus is on SingTel to demonstrate that it is not dominant in the relevant markets, not on commentators to undertake the analysis for SingTel and have to prove otherwise.

3.3 For the purposes of these comments, REACH will refer to the Retail ITS market and the Wholesale ITS market separately where appropriate. In respect of the defining the geographic market, SingTel has completely ignored crucial demand-side substitution factors in its analysis of the relevant market.

Product Market

3.4 Clearly, the Listed Services are not all in the same product market as they are not all perceived as substitutes for each other. There are also factors at a functional level which distinguish these services – which will be considered below. SingTel needs also to demonstrate that, because of different call charging structures, customers perceive international calls from mobile telephones as substitutes for calls from PSTN fixed lines – customers' perceived lack of substitutability being reflected by the fact that the majority of long duration international calls are still made from fixed lines rather than mobile handsets. Equally, whether customers perceive any calls from fixed lines as substitutes for calls from mobile telephones as they lack the defining feature of mobility. Also, there are questions whether, while gaining popularity, the use of VoIP technology is truly regarded by customers as substitutable for calls from the PSTN because of remaining quality and access distinctions.

[11] Paragraph 4.11 and 4.12 of the Exemption Request.

3.5 Further, REACH is concerned that as the Listed Services are qualified by SingTel as being without limitation that, if the Exemption Request were granted, definitional "creep" could enable SingTel to include other or new services under the exemptions without appropriate regulatory approval.

Functional Markets

3.6 It is clear that the Listed Services fall into at least two different functional markets – the Retail ITS market and the Wholesale ITS market – and that these markets should be subject to separate exemption or dominance assessments. These market distinctions are apparent from the following:

- There are distinctly different types of customers in the retail and wholesale markets. The focus of the retail customer is on mass market products and services which are available "on the street". Wholesale customers are sophisticated buyers of telecommunications services who purchase in bulk either for large company internal international networks, resale or as the wholesale input to their retail offerings.

- Customers do not consider services in one market to be substitutes for services in the other market. For example, a retail customer does not perceive international virtual private networks (**VPN**), international conference calling, or bulk voice services as substitutes for international direct dialing (**IDD**) services because of the technical requirements, bulk commitments, and minimum costs associated with these wholesale services.

- Operators market their retail and wholesale services differently. Retail services are generally promoted through the mass media, while wholesale services are offered and supported by dedicated account managers and offer different levels of service, customization, and support.

- SingTel demonstrates this difference between retail and wholesale markets by specifically identifying certain services as belonging to a particular market – for example, through branding of services like "Wholesale Voice Basic Services".

3.7 Consequently, REACH considers SingTel has not even properly defined the markets and context within which it is asking the IDA to consider the Exemption Request. REACH would suggest that SingTel be obliged to withdraw its submission on these grounds alone, but the further analysis in these comments demonstrates that there is no justification to grant the Exemption Request for any functional market at all.

Geographic Markets

3.8 As the Listed Services are promoted and sold in Singapore, REACH agrees that the promotion and supply of Retail ITS and Wholesale ITS is in Singapore, but that the relevant Singapore markets consist of individual geographic markets determined on a route-by-route basis.

3.9 When addressing the question of the appropriate geographic market in the Exemption Request, SingTel only considers supply-side substitution effects (and then both incompletely and inconclusively) but does not consider demand-side substitution.

3.10 Regarding supply-side substitution, SingTel makes much reference to generalised developments in the global and regional telecommunications environments as justification that the locations for which Retail ITS and Wholesale ITS services are sold should be treated as a single market. However, the developments which SingTel refers to – increased submarine cable capacity, openness of overseas markets, transit arrangements – pertain more to the definition of the geographical dimensions of the international telecommunications facilities market than the international telephone services markets which are the matter for consideration following the Exemption Request. Even so, as SingTel has a capacity share of approximately 65% of the Singapore international telecommunications facilities market[12] it would also be considered dominant in this market in most other jurisdictions.

[12] REACH estimate based upon independent industry research reports.

3.11 Regardless, the factors above which SingTel has identified as reasons why a route-by-route analysis is inappropriate do not stand closer examination:

- *Increased deployment of submarine cables.* While submarine cable capacity may have grown in recent years, there has been little change in the locations which they connect. Consequently, there has not been a significant increase in the geographic scope of direct connections from Singapore.

- *Increased openness of telecommunications markets.* While there has been some further liberalisation of global telecommunications markets, not all economies have taken such measures. Even where there have been market liberalisation moves, they have not been uniform in either scope or timing. Further, despite some easing of regulatory barriers, many countries have other restrictions affecting the openness of their telecommunications markets – prohibitive financial commitments, foreign ownership restrictions.

- It was exactly because of the vast range in the extent, scope and scale of competitiveness of individual distant-end markets following WTO market liberalisation commitments that OFTA undertook a route-by-route analysis[13]. Similarly, Oftel in the UK concluded that route-by-route analysis is necessary because of different market conditions prevailing at the distant-ends[14].

- *Better developed transit market.* Further development of the transit market does not negate the fact that highly effective transit or "hubbing" markets existed when route-by-route geographic market definitions were considered appropriate in other jurisdictions. A high level of hubbing existed in 1998 when route-by-route geographic markets assessments were applied Hong Kong – hubbing and callback were the main reasons for PCCW-HKTC[15] having only about a 60% market share at that time.

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[13] *"Local Access Charge and Modified Delivery Fee Arrangements, Statement of the Telecommunications Authority, Hong Kong",* dated 25 November 1998.

[14] *"Mercury as a Well Established Operator",* Oftel, dated June 1997, paragraphs 2.6 to 2.8.

[15] PCCW-HKT Telephone Limited (**PCCW-HKTC**), formerly known as (1) Cable & Wireless HKT Telephone Limited and (2) Hong Kong Telephone Company Limited.

3.12 SingTel's other supply-side argument against route-by-route market analysis is that StarHub has access to international facilities. Again, this in the main refers to the international telecommunications facilities market in which SingTel is dominant, and is more suited to a discussion on barriers to market entry, not the relevance of the competitiveness of markets on a route-by-route basis.

3.13 One further important indicator of demarcation supporting route-by-route assessment is that operators, in both retail and wholesale markets, promote competitive and non-competitive routes differently. This can be by offering innovative pricing and service packages for competitive routes, and plainer less flexible offerings on less competitive routes.

3.14 SingTel, in the Exemption Request, ignores demand-side substitution effects when considering the relevant geographic markets for Retail ITS and Wholesale ITS. SingTel does this despite the fact that regulators in other jurisdictions, notably the FCC in the US, are increasingly moving toward a view that demand-side substitution is the key determining factor in defining geographic markets.

3.15 That there are distinct route-by-route geographic markets is simply and conclusively demonstrated by the fact that customers in neither the Retail ITS market nor the Wholesale ITS market consider calls to country A to be substitutes for calls to country B.

3.16 SingTel may argue, in respect of the wholesale market, that hubbing allows customers to reach any destination. However, notwithstanding REACH's comments about hubbing above, the wholesale customer still looks to buys traffic minutes to a particular destination regardless of the means of connection – the customers requirements and demands are route specific, and he or she buys in the market for minutes to that specific destination. Therefore a route-by-route approach to relevant geographic market definition is the appropriate approach.

3.17 REACH considers SingTel's attempt to disqualify route-by-route geographic market analysis on the grounds of administrative inconvenience as almost an act of desperation. As recently as October 2002, OFTA reconfirmed its view that a route-by-route analysis of the external call services market is the most appropriate:[16]

"The TA stated in the August 1999 Non-Dominance Statement that, "like all other market definitions – in particular in a fast moving telecommunications market – the definition can never be static and that in the future this may no longer be appropriate" (paragraph 18). While the retail external call services market is becoming less and less segregated across different destinations, especially over the Routes, the TA does not consider the market to be fully synthesized yet. Therefore, he considers a pure collective assessment on the Application to be inappropriate and imprudent. Instead, the TA will first conduct a route-by-route analysis, and on top of which he will make further observations on a collective or grouped basis. He will then consider whether collective or grouped observations should contribute to his decision. The TA does not accept insignificant traffic and administrative ease to be the rationale for a collective assessment, but will take into account any difference in consumer and producer behaviours over the minority routes."

3.18 Clearly, as route-by-route market analysis and assessment has been successfully undertaken by both OFTA and Oftel, this method is a practical means of market assessment for regulators and does not introduce "undue complexity"[17]. Further, using the experiences of OFTA and Oftel, the IDA is in a position to 'stand on the shoulders' of these regulatory bodies in implementing such arrangements and avoid any unnecessary complexity.

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[16] *"Application for a Declaration of Non-Dominance in the Retail External Call Services Market for all the Routes which PCCW-HKT Telephone Limited is Still Regarded as Dominant, Statement of the Telecommunications Authority, Hong Kong"*, dated 8 October 2002, paragraph 31.
[17] Paragraph 4.14 of the Exemption Request.

3.19 Last in respect of defining the relevant market, REACH believes that because of its proximity, materiality, economic, historic, and social ties and importance to Singapore, the Malaysia route should be considered as a separate market from all other routes at both retail and wholesale levels. The need for such separate consideration of the Malaysia route is re-emphasied by the fact SingTel treats Malaysia as a separate market by separating Malaysia in its reporting of other international traffic performance[18].

3.20 REACH, therefore, concludes that SingTel has not adequately or correctly defined the relevant market. REACH considers that the relevant market comprises two separate Retail ITS and Wholesale ITS markets, and that the geographic market is the market in Singapore for Retail ITS and Wholesale ITS services on a route-by-route basis. Further, that there is a separate market for the Malaysia route.

4 ASSESSMENT OF DOMINANCE

Degree of market concentration and market share

4.1 Most regulatory and antitrust authorities in other jurisdictions recognise that market share by itself is not the sole indicator of dominance, but should be considered in conjunction with other relevant factors. SingTel, however, in the Exemption Request maintains that market share is of no consequence in a dominance review or other assessment of market power concerning the grant of exemptions from Dominant Licensee obligations:[19]

> *"Intense price competition is the best indicator of established and sustainable competition in Singapore, irrespective of the market shares of the respective operators".*

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[18] As footnote 4.
[19] Paragraph 5.29 of the Exemption Request.

4.2 Consequently, SingTel does not provide any market share data or analysis in the Exemption Request to support its request for the IDA to grant the exemptions. REACH considers that SingTel is incorrect in dismissing market share as a relevant factor in a dominance or related assessment. REACH suspects that SingTel's high shares of the Retail ITS and Wholesale ITS markets is the reason why SingTel has avoided any market share analysis. REACH believes that in line with regulatory authorities in other jurisdictions, and when considered with other factors, high market share is a strong indicator of dominant market power.

4.3 SingTel's 79% share of total international traffic clearly demonstrates that SingTel is dominant in the overall ITS markets. This is above the 75% threshold for an automatic presumption of dominance in Hong Kong[20].

4.4 When AT&T in the US, Telstra in Australia, and PCCW-HKTC (retail) and REACH (wholesale) in Hong Kong were declared non-dominant for international services, they all had market shares of below 60% compared to SingTel's 79% share of total international services at 31 December 2002. In the case of Hong Kong, non-dominance was not granted until the incumbents had less than 50% share of their respective retail and wholesale external services markets, and in the case of the external facilities market less, than 25% market share.

4.5 SingTel's 79% of total international services is over twice the 35% threshold at which the IDA considers there is a heightened risk of anti-competitive conduct[21].

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[20] Paragraph 38 of the Competition Guidelines.
[21] Paragraph 6.2.3.1 of the Consolidation Guidelines.

4.6 SingTel's 79% share of the total ITS markets after three years of full liberalisation of the telecommunications market represents a maximum market share loss of only 21%. This pace of market share loss is not significant and does not indicate the presence of strong or effective competition. This compares to over 40% market share which PCCW-HKTC in Hong Kong lost over a similar period of emerging competition, and yet was still not declared non-dominant for these services. Further, the equivalent external call services market in Hong Kong was liberalised in a more piecemeal manner than Singapore, mainly just callback competition initially. In contrast, the Singapore market has been fully liberalised for services and facilities for three years now, but SingTel has lost only half as much market share to competition as PCCW-HKTC experienced.

4.7 While there are over 600 operators licensed to provide ITS service in Singapore, the fact that SingTel still retains a 79% market share after three years of competition indicates a highly concentrated market.

4.8 The Exemption Request makes frequent reference to regulatory non-dominance decisions in other jurisdictions as justifications to be granted the exemptions. However, these decisions were often taken in different contexts and circumstances to those in which SingTel is currently situated. For example, when AT&T was declared non-dominant in its national long distance and international services markets it no longer had control of the downstream local network bottleneck facilities, unlike SingTel. Consequently, the comparisons which SingTel makes with other jurisdictions are not necessarily valid.

4.9 REACH believes that SingTel's market share of, and the concentration in, the markets for ITS services clearly demonstrates SingTel's dominance in these markets – including the Retail ITS market and the Wholesale ITS market.

Power to Implement Decisions

4.10 SingTel's main arguments to support its request for exemption from Dominant Licensee obligations are that it faces a large number of competitors[22], and that there has been intense price competition[23]. REACH maintains that while both statements are in part true, neither supports SingTel's case for relief from the Dominant Licensee obligations.

4.11 As stated above, although there are over 600 operators licensed to provide ITS services, the concentration of the ITS markets in SingTel and SingTel's market share indicate that these operators are unable to provide effective competition to SingTel. They are constrained in their ability to compete with SingTel because of other factors, possibly the high prices which SingTel charges for access to certain critical assess facilities or customer inertia.

4.12 Further, SingTel lists in paragraph 5.15 of the Exemption Request a number of ways in which it claims that these operators can compete with SingTel. SingTel has not, however, demonstrated that these options are available operators at prices which allow these operators to compete effectively against SingTel. In many cases, these options and their pricing are controlled by SingTel.

4.13 While there have been price reductions in Singapore in recent years, these reductions do not necessarily reflect intense price competition in the way that SingTel would have the IDA believe. Increases in submarine cable systems capacity and the resultant oversupply of capacity, plus lower unit capacity costs arising from the application of newer technologies, have enabled some price reductions with corresponding growth in traffic. In this, SingTel, reflecting the underlying international facilities market in which it is dominant, has enjoyed these economies as much or more than its competitors and has passed on some of these benefits to the Wholesale ITS market - more so than as a result of suddenly feeling the heat of competition.

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[22] Paragraph 5.15 of the Exemption Request.
[23] Paragraph 5.24 of the Exemption Request.

4.14 The entry of competitors in the wholesale ITS market has not forced SingTel to take the first initiative in reducing wholesale prices. SingTel has not been the price leader in the wholesale ITS market, yet has retained a market share in the region of 79%. This ability not to have to market its wholesale ITS services seriously, to charge a premium price, and to still maintain such high market share indicates that SingTel has dominant operator market power in its decision making.

4.15 As an example of price competition in Singapore, SingTel uses the reduction in local leased circuit prices by up to 35% between 2000 and 2002[24] to substantiate its claim. However, SingTel fails to highlight that local leased circuit prices were at an extremely high level in 2000, and still remain very high – twice the price of an equivalent circuit in Hong Kong[25] – because there is little or no alternative supply. REACH submits that such price declines have resulted from influences other than competitive pressure as there has not been a sudden increase in the competitive supply of local leased circuits.

4.16 In contrast, SingTel has been very aggressive in its pricing in the Retail ITS market. In many instances SingTel looks to be the price leader and if a competitor reduces its prices, SingTel reacts with still lower prices. This is particularly true of its v019 (budget call) and prepaid calling card services which now command major shares of the retail market.

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[24] Paragraph 5.25 of the Exemption Request.

[25] Source: Benchmark Comparison Between EU and Asian Pricing for 5Km, 2Mbps Local Leased Circuit, *"Watching The Local Leased Tails – An Industry Update"*, teledotcom, dated 1 April 2003 (see Attachment 2).

4.17 REACH, however, does not believe that this aggressive pricing by SingTel is a reaction to competitive pressures per se, but more a deliberate strategy to undercut the market in order to constrain sustained competition. SingTel is in a position to employ such a strategy because of its position of dominance in the Wholesale ITS market and the markets for access to critical facilities. As commented early, SingTel has not had to seriously market its wholesale services and has been able to maintain its prices. By generating significant profits in the Wholesale ITS market, SingTel has been able to reduce its prices in the downstream Retail ITS market – narrowing retail margins and putting price pressure on its retail competitors, yet remaining profitable overall because of its wholesale market position. SingTel then need simply wait until retail competition runs out of steam. In retaining a 79% Retail ITS market share, SingTel appears to have been successful with this strategy.

4.18 This ability to leverage dominance in one market into another such that it is dominant in both markets is widely recognised (and applies equally to the leveraging of SingTel's market power in the local leased circuit market into the Wholesale ITS market), for example, in the EU:[26]

> *"Where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow market power held in one market to be leveraged into other markets, thereby strengthening the market power of the undertaking."*

[26] Commission proposal for a Directive on a common regulatory framework for electronic communications networks and services COM(2000) 393 (OJ C365E, 19.12.2000), p198.

4.19 Currently, SingTel's prices are subject to prior IDA approval. Without this necessary control, SingTel will be in a position to further target its pricing in a manner which drives competition from the market – particularly retail resellers who are dependent upon SingTel for their service inputs and will be among the hardest hit if the IDA lifts the obligation on SingTel to provide services for resale or packaging. SingTel's behaviour in other markets – for example, local leased circuits and Cable TV access – suggests it may well cease providing these services if given the option.

Height of Barriers to Entry

4.20 SingTel claims there are no barriers to entry to the Retail ITS market and Wholesale ITS market. REACH, however, believes that this is not true.

4.21 While there may be no or low regulatory barriers to entry, there exist economic and other barriers to entry. For example, as the principal local network operator controlling 99% of local telephone lines[27], SingTel acts as a transit network between other operators and their customers, and between operators themselves. SingTel acts as a gatekeeper controlling interconnection capacity, configurations, and protocols. Its competitors are unable to react quickly to many market opportunities because SingTel controls the local networks facilities.

4.22 Although access rights and terms for competitors to access critical facilities are set out in SingTel's Reference Interconnection Offer (**RIO**), applications for access to backhaul, local exchanges, co-location space, manhole access, and cable stations – all of which are strategic network elements – can take considerable time to process or may even be rejected by SingTel. Again, this delays or restricts SingTel's competitors in offering competitive services.

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[27] As footnote 5.

4.23 SingTel's argument that there are no critical facilities access restrictions because its competitors can build their own facilities is invalid as competitive build takes time and, for some necessary network elements, duplication of the existing SingTel infrastructure is both inefficient and prohibitively expensive.

4.24 In order to connect elements of their networks and to connect to many of their wholesale customers, SingTel's competitors are often obliged to obtain local leased circuits from SingTel. However, as already commented above, SingTel charges very high prices for these local leased circuits. After recovering the high cost of these local leased circuits, competitors Wholesale ITS rates leave competitors little margin – margin pressure which will increase if regulatory control is removed from SingTel's Wholesale ITS prices.

4.25 SingTel claims that there are no barriers to customers switching between operators. This is not true, particularly in the Wholesale ITS market where multi-national companies have sophisticated telecommunications systems which are expensive to both set up initially and to change in order to switch to another operator – creating a disincentive for customers to change operators.

4.26 Barriers of SingTel's brand image and customer inertia have to be overcome by SingTel's competitors. Years of familiarity with the SingTel brand means instantaneous recognition and association with telecommunications in Singapore. Difficulties encountered by SingTel's competitors in accessing the necessary infrastructure to reach all parts of Singapore means those competitors' services may not be available nationwide – providing customers with no alternative operator to churn to. SingTel does not provide any details of its loss or "churn" of customers to other operators, but as SingTel's market share loss has been very low it is highly probable that its customer churn is equally low.

4.27 SingTel's ubiquitous presence in Singapore and its span of both the local and international markets place it in a position of unique advantage in Singapore, especially in the provision of one-stop-shopping for domestic and international telecommunications services.

4.28 SingTel has an advantage over its competitors in Singapore in that it has for many years had in place correspondent relationships with distant-end administrations which its competitors may not be able to replicate. In some cases the distant-end administration may deign to correspond only with SingTel.

Product differentiation and sales promotion

4.29 As commented above, SingTel does not have to market its Wholesale ITS services seriously. REACH also believes that SingTel's price reductions in the Retail ITS market are not driven by competitive pricing pressures but a strategy of market domination allowed by its overall ability to finance sustained low retail prices.

The nature of corporate relationships (vertical integration)

4.30 Not only is SingTel dominant in the Retail ITS and Wholesale ITS markets, it is also dominant in the upstream international telecommunications facilities market with control of over 65% of external Singapore capacity, the local wholesale market for local leased circuits, and controls 99% of local telephone lines. Dominance in each of these market overflows into and strengthens SingTel's dominance in the other markets. This vertical integration provides SingTel with a tremendous advantage over its competitors through end-to-end ownership of the facilities and services which support and feed into its Retail ITS and Wholesale ITS markets. This end-to-end ownership also enables seamless integration of planning and operation of all services and unmatched economies of scale.

4.31 SingTel has flexibility and discretion to price elements of its end-to-end facilities such that it maximises profits from those elements which are least open to competition – elements which are often necessary inputs to its competitors' international operations.

4.32 Given the vertically integrated operations of SingTel and its dominance at each market level, continued Dominant Licensee obligations are needed to ensure that there is arms length treatment of transactions between the facilities and services, wholesale and retail, and local and international operations of SingTel internally, and that SingTel does not discriminate against its competitors in favour its affiliates.

4.33 SingTel's vertical integration also provides it with a cost advantage over many of its competitors who operate only in the international markets. In many instances, SingTel can use the same equipment for both local and international services – splitting the cost between the two - while its competitors who operate only in the Wholesale ITS market have to recover their equipment costs from only one market.

4.34 SingTel also has access to end-to-end customer information, giving it complete customer profiles as a basis for marketing activities. Further, SingTel may also have information about its competitors' customers and/or network plans – where SingTel provides the local connectivity for its competitors and is advised of its competitors' capacity requirements for network planning and provisioning purposes – which could be used for marketing purposes to either target those customers or hijack competitors product or service initiatives.

4.35 The application of the tests for an assessment of dominance show clearly that SingTel is dominant in all respects, and that there is a continued need for the Dominant Licensee obligations to be applied to protect End Users and preserve effective competition amongst Licensees. Accordingly, the IDA should not grant the exemptions.

5 OTHER RELEVANT FACTORS

5.1 Other relevant factors which need to be considered in this assessment of SingTel's dominance are the, probably, exclusive opportunity SingTel has to net account and its profitability to finance operations.

5.2 As the principal recipient of inpayments from overseas administrations for the termination of international traffic in Singapore, SingTel is provided with a source of revenue and funding with which to offset or "net account" its outpayments for outgoing international traffic. This ability to net account enables SingTel to lower both its Wholesale ITS and Retail ITS prices – because by offsetting its inpayments against its outpayments it lowers its effective outgoing traffic cost base. SingTel is the only operator in a position to enjoy the benefits of a material degree of net accounting.

5.3 SingTel has claimed that competition has driven down its revenues. This may be so, but a decline in revenue is not per se an indication of loss of dominance in a market. The revenues of all operators may have dropped. The fact that SingTel has continued to be highly profitability in times when most other operators are facing difficult financial times provides it with resources for expansion and furthering its market presence which are not available to other operators.

6 EFFECTS OF AN EXEMPTION FROM DOMINANT LICENSEE OBLIGATIONS

6.1 The effects of exemption from the Dominant Licensee obligations for SingTel would be fundamental and far-reaching for competitive operators in the Retail ITS and Wholesale ITS markets. The exemptions which SingTel seeks will allow it to:

- No longer provide telecommunication service to any End Users at prices, terms and conditions that are just and reasonable.

- Discriminate against End Users when providing comparable telecommunication services to subsidiaries, affiliates or related entities.

- Set prices without the IDA's approval.

- No longer have to provide telecommunication services on an unbundled basis.

- No longer have to allow other Licensees to resell SingTel telecommunication services, or allow all entities the same agency arrangements as each other.

- Engage in pricing practices which would be considered anti-competitive pricing abuses by Dominant Licensees.

- Discriminate between affiliates and non-affiliates, and alter the physical and logical interfaces of its network in a manner that imposes significant costs on interconnected Licensees.

6.2 The condition behind the rationale for the Code contemplating the grant of exemptions to allow these types of behaviour is that the relevant markets should be so competitive and mature that plentiful alternative network and wholesale suppliers exist, such that the market is no longer dependent upon SingTel for local and international infrastructure and other essential wholesale and retail inputs.

6.3 Clearly, market conditions today do not satisfy these criteria. There are insufficient viable available alternatives to SingTel for infrastructure and facilities to enable effective competition – certainly the alternatives are not sufficient to provide nationwide competitive services to many End Users. Even under the current arrangements, FBO Licensees have great difficulties in accessing all of Singapore and the grant of the exemptions would only exacerbate the situation. As for SBO Licensee resellers, to grant SingTel the Exemption Request now would cripple the competitive industry in a very short while – putting smaller Licensees who depend on the resale of SingTel telecommunication services for their existence out of business overnight because adequate alternatives do not exist. End Users would again suffer as a result as smaller competitive operators, some in niche markets, disappear.

6.4 SingTel's market behaviour in charging high prices for local leased circuits (because it is virtually the sole-supplier of such circuits and these are a bottleneck facility essential for the provision of international services) is an example of how SingTel exercises its dominant operator market power even with regulatory controls in place. The absence of adequate regulatory controls would allow SingTel to run riot, driving virtually all competition from the market – global telecommunications operators and small operators alike.

6.5 The lengthy and still ongoing dispute between StarHub and SingTel concerning StarHub accessing SingTel infrastructure to enable the provision of cable television access, despite the IDA's intervention and instruction to SingTel to allow StarHub this access, is another example of how SingTel acts when unconstrained by effective regulation. Aside from demonstrating SingTel's natural inclinations toward competitors and its repressive responses to competition, SingTel's actions in this dispute look to frustrate Singapore Government policy of effective market liberalisation.

6.6 It would be highly injurious and possibly fatal for SingTel's competitors at all levels and in all international markets if SingTel were granted the exemptions. Following the crippling, if not total demise, of SingTel's competitors, the competitive momentum which has been built today would soon ebb, and End Users would find themselves worse off as the choices they have at the moment shrink and SingTel's prices escalate.

6.7 While the IDA does have other regulatory powers, SingTel's actions in other markets indicates that these powers will be insufficient to constrain SingTel in its behaviour. At best, SingTel would only apologise for market abuses and amend its behaviour after the event – when the damage has already been done to the competitive process and competition is unlikely to recover. REACH firmly believes, certainly at this early stage of Retail ITS market and Wholesale ITS market maturity, that retention of all the Dominant Licensee obligations for SingTel is essential.

6.8 Fundamentally, the burden of proof is on SingTel to demonstrate that continued application of the provisions for which it seeks exemptions is not necessary to protect End Users or promote and preserve effective competition amongst Licensees, not for these Licensees to have to prove that the provisions are still necessary. OFTA takes an approach in similar circumstances that an operator with 50% or more market share is more likely to be dominant that not, and places the onus on an applicant for non-dominance to show that it is not dominant[28]. SingTel does not provide such proof. Such verifiable data as is incorporated in the Exemption Request does not support a case for the exemptions.

7 CONCLUSION

7.1 REACH agrees with previously expressed views of the IDA and other regulatory authorities that as markets develop and mature, and market forces exert themselves, the need for direct regulatory intervention in the marketplace reduces. However, careful examination and consideration of the marketplace is necessary to ensure that this transition has occurred before regulatory control over a dominant operator can be eased. SingTel must satisfy all relevant tests for lifting of the Dominant Licensee obligations, not just some of the tests. Premature relaxation of regulation can seriously harm consumers and the competition process and, even if regulation is later reinstated, market recovery would be lengthy at best.

7.2 Following a more thorough review than that attempted in the Exemption Request, REACH concludes that there are two relevant markets to be considered – the Retail ITS market and the Wholesale ITS market – and that they should both be assessed on a route-by-route geographic basis.

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[28] *"Application for a Declaration of Non-Dominance in the International Call Services Market for Non-China Routes by Cable & Wireless HKT Telephone Limited, Statement of the Telecommunications Authority, Hong Kong"*, dated 4 August 1999, paragraph 44.

7.3 From this review, relevant factors like SingTel's high market share, high market concentration, power to implement decisions, high barriers to entry, lack of or particular motives for sales promotions, and vertical integration, all show that SingTel is dominant at all levels of the Retail ITS market and Wholesale ITS market. No factors have emerged which justify even a partial relaxation of the Dominant Licensee obligations.

7.4 Further, given the potential for abuse of dominant market power by SingTel which granting the exemptions would allow – particularly in light of the market behaviour which SingTel has already demonstrated in respect of local leased circuits and cable TV – REACH is of the opinion that the IDA acceding to the Exemption Request is not only unjustified but would also be damaging to the competition process. Regulatory controls such as arms length and non-discriminatory treatment of its affiliates by SingTel are still need to prevent abuses of market power. There are insufficient viable sources of resale services if access to SingTel's services by retail resellers is denied, and End Users will suffer. The ITS markets are, quite simply, not yet mature enough to withstand SingTel current dominance without these regulatory constraints being in place.

7.5 In summation, REACH is of the view that SingTel is dominant in both the Retail ITS and Wholesale ITS markets, and that the extent of its dominant market power means that the Dominant Licensee obligations for which SingTel is seeking exemptions must remain in place. The criteria for the exemptions – no longer a need to protect End Users or necessary for the preservation of effective competition among Licensees – have not been satisfied. REACH has formed this opinion on the basis of the Code, generally accepted tests for the assessment of dominance, and its economic analysis of the current state of the Retail ITS and Wholesale ITS markets. Accordingly, REACH urges the IDA not to grant the SingTel Exemption Request.

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